FILED NOVEMBER 1, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **LEE CHARLES COOPER,** **Member No. 53337,** A Member of the State Bar.	)))))))	Case Nos. **08-O-14826-PEM** (09-O-10082; 09-O-10523) **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this default disciplinary matter, respondent **Lee Charles Cooper** is charged with seven counts of professional misconduct in three client matters, including (1) misappropriation ($111,350.62); (2) failing to maintain client funds; and (3) failing to communicate with client.

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution to three clients.

II. Pertinent Procedural History

On May 27, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

Respondent's default was entered on July 14, 2010, and respondent was enrolled as an inactive member on July 17, 2010. The matter was submitted for decision on August 9, 2010, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 13, 1972, and has since been a member of the State Bar of California.

A. Client Trust Account

Between on or about April 12, 2008 and January 26, 2010, respondent held a client trust account (CTA) at the Bank of Alameda. The balances during this period in respondent's CTA were as follows:

DATE	*BALANCE*
4/21/2008	$4,147.77
6/25/2008	$5,003.47
8/25/2008	$4,153.51
9/25/2008	$3,890.96
10/24/2008	$3,890.92
11/25/2008	$3,890.95
12/24/2008	$3,890.92
1/23/2009	$2,090.80
2/25/2009	$2,090.70
3/25/2009	$2,090.69
4/24/2009	$2,090.69
5/22/2009	$2,090.69
6/25/2009	$2,090.70
7/24/2009	$1,895.68
8/25/2009	$1,895.68
9/25/2009	$1,895.68
10/23/2009	$1,895.68
11/25/2009	$1,895.68
12/24/2009	$7,965.68
1/25/2010	$1,812.80

B. The Valdez Matter

On or about July 6, 2007, Elvira Valdez ("Valdez") hired respondent to represent her in a matter involving the conversion of funds and fraud against Jorge Infante and Purificacion Infante ("the Infantes"). Respondent entered into a written fee agreement to be paid $215 per hour plus costs. On or about July 6, 2007, Valdez paid respondent $6,000 in advanced fees.

On or about January 15, 2008, respondent settled the Valdez matter against the Infantes for $42,700. The Infantes sent respondent check No. 1014 in the amount of $42,700, made payable to Lee Cooper in Trust for Elvira Valdez. On or about January 25, 2008, respondent deposited the check into his CTA.

On or about April 12, 2008, respondent gave Valdez check No. 1001 in the amount of $10,000, as partial payment of the settlement funds. The check came from an account other than respondent's CTA. As of this date, and continuing thereafter, respondent was required to maintain at least $32,700 ($42,700 - $10,000 = $32,700) in his CTA on behalf of Valdez. At no other time did respondent provide any of the settlement funds to Valdez, or to anyone else on behalf of Valdez.

On or about April 22, 2008, respondent received a letter from Richard Lehrfeld ("Lehrfeld"), Valdez's successor counsel, notifying respondent that his services had been terminated. Lehrfeld requested, on behalf of Valdez, that respondent pay the Valdez funds, received from the Infantes, to Lehrfeld. The letter contained authorization directly from Valdez for the disbursement of the settlement funds. Thereafter, respondent failed to provide the funds to Valdez or his counsel.

As of on or about April 22, 2008, respondent's attorney fees and costs in the Valdez matter totaled less than the $6,000 advanced by Valdez.

Between on or about April 12, 2008 and January 26, 2010, the balance in respondent's CTA repeatedly fell below $32,700. On January 25, 2010, the balance dipped to $1,812.80.

Count 1(A): Failing to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith.

Respondent had a fiduciary duty to hold in trust at least $32,700 of entrusted funds belonging to Valdez in his CTA. Between April 2008 and January 2010, the balance in the CTA repeatedly fell below $32,700. Thus, by not maintaining at least $32,700 received on behalf of Valdez in the CTA, respondent willfully failed to maintain client funds in a trust account in violation of rule 4-100(A).

Count 1(B): Misappropriation (Bus. & Prof. Code, § 6106)[1]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

Here, respondent received $42,700 for the benefit of Valdez. But after he had deposited the funds into his CTA and disbursed $10,000 to the client, the balance fell below $32,700, beginning in April 2008. Therefore, because the balance in respondent's CTA fell below the

[1] References to sections are to the provisions of the Business and Professions Code.

amount of entrusted funds of $32,700 to $1,812.80 on January 25, 2010, respondent misappropriated the money and committed an act of moral turpitude in willful violation of section 6106.

The court declines to find that respondent also misappropriated the $6,000 advanced fee paid by Valdez. It is well settled that in default proceedings, a respondent may be disciplined only for misconduct properly charged in the NDC. The fact that respondent's attorney fees and costs totaled less than $6,000 and that Valdez claimed he never received an accounting from respondent is not clear and convincing evidence that respondent had misappropriated the advanced fee. Respondent's failure to return any portion of unearned fees was not alleged in the NDC and thus, such alleged misconduct could not be used as a basis for culpability or reimbursement in a default matter. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.)

C. The Alston Matter

On or about March 24, 2007, Brian Alston ("Alston") hired respondent to represent him in a personal injury matter arising out of a motor vehicle accident. At or around this time Alston and respondent entered into a written contingent fee contract. Respondent's fee was for 33-1/3% before filing or 40% after filing.

On or about September 11, 2007, respondent settled Alston's matter, before filing, for $43,500. Respondent was entitled to 33-1/3% of the $43,500 for a total attorney fee of $14,500. Alston's share of the settlement was $29,000.

On or about October 9, 2007, respondent received $43,500 for Alston and deposited the $43,500 settlement check received on behalf of Alston into his CTA.

Between on or about October 9, 2007, and on or about November 20, 2008, Alston made multiple requests of respondent for Alston's share of the settlement funds. Respondent received these requests, but did not forward the funds.

Between on or about October 9, 2007, and on or about May 24, 2010, respondent provided a total of $4,500 ($3,000 on November 30, 2007, and $1,500 on April 4, 2008) to Alston from the settlement funds. At no other time did respondent provide any of the settlement funds to Alston, a lien holder in the Alston matter, or anyone else on behalf of Alston.

As of on or about April 4, 2008, and continuing thereafter, respondent was required to maintain at least $24,500 on behalf of Alston in his CTA.

Between on or about April 4, 2008, and November 26, 2008, Alston, and at Alston's request his mother, contacted respondent requesting a status update on the legal matter and the funds owed to Alston. The contacts were timely received by respondent and made on the following dates and manner described:

- August 8, 2008 (Taped note to respondent's office window asking for telephone call.)
- August 12, 2008 (Left message for respondent, requesting return call so that Alston could receive money and case be closed.)
- August 13, 2008 (Taped note to respondent's office window asking for call.)
- September 2008 (Multiple voice-mail messages asking for return call with date and time to meet so that Alston could receive money and case be closed.)
- October 3, 2008 (Taped note to respondent's office window asking for call.)
- October 3-14, 2008 (Multiple voice-mail messages asking for return call.)
- October 14, 2008 (Taped note to respondent's door.)
- October 29, 2008 (Voice-mail message asking for return call.)
- November 3, 2008 (Voice-mail message asking for return call.)

- November 20, 2008 (Voice-mail message asking for return call.)

Respondent failed to respond to any of Alston's requests to meet and for information on the settlement funds, which were made between on or about April 4, 2008, and November 26, 2008.

On or about November 26, 2008, Alston mailed a complaint regarding respondent's failure to communicate to the State Bar of California.

Count 2(A): Failing to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))

Respondent had a fiduciary duty to hold in trust at least $24,500 of entrusted funds belonging to Alston in his CTA. Because the balance in the CTA repeatedly fell below $24,500 and dipped to $1,812.80 in January 2010, respondent willfully failed to maintain client funds in a trust account, in violation of rule 4-100(A).

Count 2(B): Misappropriation (Bus. & Prof. Code, § 6106)

Respondent dishonestly or with gross negligence misappropriated Alston's settlement funds for his own use and benefit. Alston's share of the settlement funds was $29,000. After having deposited the settlement funds of $43,500 and disbursed $4,500 to the client, respondent still owes Alston the balance of $24,500 ($29,000 - $4,500). Therefore, because the balance in respondent's CTA fell below the amount of entrusted funds of $24,500, respondent misappropriated the money and committed an act of moral turpitude in willful violation of section 6106.

Count 2(C): Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of

significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to respond to Alston's notes and voice-mail messages, respondent failed to respond to Alston's reasonable status inquiries, in willful violation of section 6068, subdivision (m).

D. The Macedo Matter

On or about December 6, 2006, Hector Macedo ("Macedo") hired respondent to represent Macedo in a legal matter. The written contract provided for a $35,000 retainer to be paid by Macedo to respondent, which was to be billed against at a rate of $215 per hour. The terms of the contract specified that the $35,000 retainer would be kept in the CTA.

On or about December 21, 2006, respondent received from Macedo's prior counsel, check No. 1181 in the amount of $69,150.62, which was a refund of funds held by prior counsel on behalf of Macedo. On or about December 26, 2006, respondent deposited the $69,150.62 received on behalf of Macedo into his CTA.

On or about April 21, 2007, respondent provided Macedo check No. 9058, made payable to Macedo's daughter's company, Experience Janitorial, in the amount of $15,000, at Macedo's request. Check No. 9058 was not from respondent's CTA.

Between on or about December 6, 2006, and on or about September 15, 2008, respondent provided no service of value to Macedo.

On or about September 15, 2008, attorney Yasmine Mehmet ("Mehmet"), successor counsel for Macedo, sent a letter to respondent, on behalf of Macedo, terminating respondent's services and demanding the return of the funds held by respondent on behalf of Macedo. At this time respondent had not earned any of the retainer, nor had he paid any money to any person or entity for the benefit of Macedo. Respondent held $54,150.62 of Macedo's money. Respondent

received this letter, but did not at this time or any other time forward the funds to Macedo or attorney Mehmet.

As of on or about September 15, 2008, respondent was required to maintain at least $54,150.62 on behalf of Macedo in his CTA.

Count 3(A): Failing to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))

Respondent had a fiduciary duty to hold in trust at least $54,150.62 of entrusted funds belonging to Macedo in his CTA. Because the balance in the CTA repeatedly fell below $54,150.62 and dipped to $1,812.80 in January 2010, respondent willfully failed to maintain client funds in a trust account, in violation of rule 4-100(A).

Count 3(B): Misappropriation (Bus. & Prof. Code, § 6106)

Respondent dishonestly or with gross negligence misappropriated Macedo's funds for his own use and benefit. After having received the funds of $69,150.62 and disbursed $15,000 to the client, respondent still owes Macedo the balance of $54,150.62. Therefore, because the balance in respondent's CTA fell below the amount of entrusted funds of $54,150.62, respondent misappropriated the money and committed an act of moral turpitude in willful violation of section 6106.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[2] stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

[2] Future references to standard(s) or std. are to this source.

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing by failing to communicate with his client and misappropriating client funds. (Std. 1.2(b)(ii).)

Respondent's misappropriation, totaling $111,350.62, harmed significantly his clients. (Std. 1.2(b)(iv).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to reimburse his three clients as follows:

- Elvira Valdez $32,700
- Brian Alston $24,500
- Hector Macedo $54,150.62

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(a), 2.2(b), 2.3, 2.4(b), 2.6, and 2.10 apply in this matter.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Then the discipline must not be less than a one-year actual suspension, irrespective of mitigating circumstances. Here, respondent's misappropriation of $111,350 is significant.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.4(b) provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproval or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar urges disbarment, citing several cases, including *Grim v. State Bar* (1991) 53 Cal.3d 21, in support of its recommendation. The court agrees.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Here, respondent had flagrantly breached his fiduciary duties to his client by taking the client funds without any explanation. And, no compelling mitigation has been shown.

Respondent's misappropriation weighs heavily in assessing the appropriate level of discipline. Like the attorney in *Grim*, the "misappropriation in this case . . . was not the result of carelessness or mistake; [respondent] acted deliberately and with full knowledge that the funds belonged to his client. Moreover, the evidence supports an inference that [respondent] intended to permanently deprive his client of [his] funds." (*Grim v. State Bar, supra,* 53 Cal.3d at p. 30.) "It is precisely when the attorney's need or desire for funds is greatest that the need for public protection afforded by the rule prohibiting misappropriation is greatest." (*Grim v. State Bar, supra,* 53 Cal.3d at p. 31.)

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (See *Grim v. State Bar, supra,* 53 Cal.3d 21.)

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Therefore, based on the severity of the offense, the serious aggravating circumstances and the lack of any mitigating factors, the court recommends disbarment.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Lee Charles Cooper** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

B. Restitution

It is also recommended that respondent make restitution to the following:

1. **Elvira Valdez** in the amount of $32,700 plus 10% interest per annum from April 22, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Elvira Valdez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. **Brian Alston** in the amount of $24,500 plus 10% interest per annum from April 4, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Brian Alston, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
3. **Hector Macedo** in the amount of $54,150.62 plus 10% interest per annum from September 15, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Hector Macedo, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Respondent must furnish satisfactory proof of payment thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.[3]

D. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: November _____, 2010

PAT McELROY
Judge of the State Bar Court

[3]Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)